

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501

IRVIN N HOYT
CHIEF BANKRUPTCY JUDGE

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December 22, 1995

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Subject: *Smith v. Farmers Home Administration*
(*In re Wilbur J. and Betty J. Smith*),
Adversary No. 94-3010;
Chapter 12; Bankr. No. 87-30162

Dear Counsel:

The matters before the Court are the MOTION TO RECONSIDER and MOTION TO AMEND DECISION AND ORDER AND TO MAKE ADDITIONAL FINDINGS OF FACT filed by Plaintiffs-Debtors on July 31, 1995, and FmHA's responses thereto. A ruling was delayed at the parties request pending an attempted settlement. This is a core proceeding under 28 U.S.C. § 157(b)(2). This ruling shall constitute the Court's findings and conclusions on the Motions as required by F.R.Bankr.P. 7052. Except for the clarification stated below, Plaintiffs-Debtors' Motions shall be denied.

Plaintiffs-Debtors' MOTION TO RECONSIDER will be denied because of its procedural irregularity. See *In re Trout*, 984 F.2d 977 (8th Cir. 1993). Moreover, the MOTION TO RECONSIDER duplicates their MOTION TO AMEND DECISION AND ORDER AND TO MAKE ADDITIONAL FINDINGS OF FACT.

As to the MOTION TO AMEND DECISION AND ORDER AND TO MAKE ADDITIONAL FINDINGS OF FACT, the Court will not amend its decision or make additional findings. The Court has found no error of law or fact that would warrant such an amendment.

The Court, however, does want to clarify one point that both parties apparently have misunderstood. In Plaintiffs-Debtors' MOTION TO AMEND DECISION AND ORDER AND TO MAKE ADDITIONAL FINDINGS OF FACT and in FmHA's response, both state that the Court has ruled that the § 1111(b) election in *In re Katcon, Inc.*, Bankr. No. 87-30158

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(Bankr. D.S.D.), applies to Debtors' Chapter 12 case. That is not what the Court ruled. There is no § 1111(b) election in Chapter 12 cases nor any similar provision under Chapter 12 that applies here. Instead, the Court concluded that "[T]he modified § 1111(b) election by RE&CD in *Katcon* covers both *Katcon's* and Debtors Wilbur and Betty Smith's real property." This arises pursuant to the terms of *Katcon's* confirmed plan, which incorporated a stipulation with RE&CD, and the personal commitments that Wilbur and Betty Smith made in *Katcon*. As previously stated,

[T]he § 1111(b) election in *Katcon* further modified RE&CD's relationship with Debtors' estate property. Ideally, Debtors' Chapter 12 plan should have been modified when *Katcon's* Chapter 11 plan was confirmed so that both plans clearly reflected RE&CD's claims against Debtors.

Memorandum of Decision, p. 8. Debtors' failure to modify their Chapter 12 plan, however, does not defeat the commitments they made in *Katcon*.

An order will be entered denying both Motions.

Sincerely,



Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: Bankruptcy Clerk

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

DEC 22 1995

Clerk
U.S. Bankruptcy Court, District of S.D.